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EXAMINER

ROBINSON, GRETA LEE

ART UNIT

PAPER NUMBER

2168

MAIL DATE

DELIVERY MODE

03/17/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/538,795

**Applicant(s)**

CRASWELL ET AL.

**Examiner**

Greta L. Robinson

**Art Unit**

2168

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 December 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-17 and 19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 and 19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 June 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/S508)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

1. Claims 1-17 and 19 are pending in the present application.
2. Claim 18 has been cancelled; and claims 1, 11, 12 and 17 have been amended.

### ***Drawings***

3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the strongly collision free deterministic identifier must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner,

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the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

## **INFORMATION ON HOW TO EFFECT DRAWING CHANGES**

### **Replacement Drawing Sheets**

Drawing changes must be made by presenting replacement sheets which incorporate the desired changes and which comply with 37 CFR 1.84. An explanation of the changes made must be presented either in the drawing amendments section, or remarks, section of the amendment paper. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). A replacement sheet must include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of the amended drawing(s) must not be labeled as "amended." If the changes to the drawing figure(s) are not accepted by the examiner, applicant will be notified of any required corrective action in the next Office action. No further drawing submission will be required, unless applicant is notified.

Identifying indicia, if provided, should include the title of the invention, inventor's name, and application number, or docket number (if any) if an application number has not been assigned to the application. If this information is provided, it must be placed on the front of each sheet and within the top margin.

### **Annotated Drawing Sheets**

A marked-up copy of any amended drawing figure, including annotations indicating the changes made, may be submitted or required by the examiner. The annotated drawing sheet(s) must be clearly labeled as "Annotated Sheet" and must be presented in the amendment or remarks section that explains the change(s) to the drawings.

### **Timing of Corrections**

Applicant is required to submit acceptable corrected drawings within the time period set in the Office action. See 37 CFR 1.85(a). Failure to take corrective action within the set period will result in ABANDONMENT of the application.

If corrected drawings are required in a Notice of Allowability (PTOL-37), the new drawings MUST be filed within the THREE MONTH shortened statutory period set for

reply in the "Notice of Allowability." Extensions of time may NOT be obtained under the provisions of 37 CFR 1.136 for filing the corrected drawings after the mailing of a Notice of Allowability.

***Specification***

4. The disclosure is objected to because of the following informalities: the disclosure lacks proper antecedent basis to the limitation "strongly collision free deterministic identifier". The examiner notes Applicant's citation of "strongly collision free" at page 6 lines 10-25 [note: response filed December 21, 2007 page 6]; however the cited portion does not reference an identifier or strongly collision free deterministic identifier.

Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

6. Claims 1-16 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The following limitation does not appear to be described within the disclosure "strongly collision free deterministic identifier",

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note the disclosure references a user identifier, device identifier, file identifier, and action\_type identifier; however there does not appear to be reference to a strongly collision free deterministic identifier [see: page 11 lines 3-24; note claim 1 line 5; claim 11 line 6; claim 12 line 5; and claim 16 line 4]. Also the disclosure does not appear to describe how the identifier is generated [see claim 1 line 6; claim 12 line 3]. Claims 2-10 and 12-15 are rejected based on dependency.

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claims 1-17 and 19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 1, 11, 12, and 16, the following claim language is vague and/or not clear: "strongly collision free deterministic identifier" [see: claim 1 line 5; claim 11 line 6; claim 12 line 5; and claim 16 line 4]. Claims 2-10 and 12-15 are rejected based on dependency.

Regarding claim 17, the following claim language is vague: "said identifier" [see claim 17 line 7]. The term "said identifier" lacks proper antecedent basis. Also, it is unclear as to what type of "identifier" is being used; note the disclosure makes reference to a user identifier, device identifier, file identifier, and action\_type identifier [see: page 11 lines 3-24]. Claim 19 are rejected based on dependency.

***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

10. Claims 1-17 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dutta et al. US Patent Application Publication No. 2002/0156921 A1 in view of Andersen US Patent 6,865,655 B1.

Regarding claim 1, **Dutta et al.** teaches a *wireless computing apparatus* [note: Figures 1, 3, and 5 ; paragraph 0017 a cellular wireless network 112] having a *processor* [note: paragraph 0033 processors 202 and 204]; and

a *memory* comprising executable instructions which, when executed are operative to [note: paragraph 0033 ];

designate data on the wireless computing apparatus *to backup* [note: paragraph 0043; Figure 5 requesting backup ];

generate a strongly collision free deterministic *identifier* for said data [note: application identified by SL paragraph 0045-0046 ];

communicate said strongly collision free deterministic identifier to *a backup server* to enable said backup server to determine whether said data is already available to said backup server or not [note: Figure 7]; and

only if said backup server indicates that said data is not already available to said backup server, *send said* data to said backup server [note: paragraph 0022; paragraph 0023-0024 wireless application protocol (WAP) defines the protocol; paragraph 0027 special protocols; paragraph 0031 **Data Backup Server 170** provides backup for wireless devices such as PDAs; paragraph 0046 sends data to backup server; backup may be predefined paragraph 0043].

Although Dutta et al. teaches the invention substantially as cited above, they do not explicitly teach backup only if data is not already available and that the identifier is a strongly collision free deterministic identifier; however they do teach predefined conditions for backup.

Andersen teaches determining if there is a data portion for backup and a mechanism for transferring a contents for backup if the system does not already have a copy. Anderson teaches recognition of the contents through a hash value (i.e. strongly



collision free deterministic identifier) or other unique identifier that identifies the contents to be evaluated [see: abstract; column 16 lines 48-57 "the identification 194 may be, for example, a hash value, checksum or other unique identifier"]. It would have been obvious to one of ordinary skill at the time of the invention to have combined Andersen with Dutta et al. because identifiers provide access or indexing ability to data for processing, and special identifiers would provide a more enhanced or customized approach to identifying data for storage.

11. Regarding claims 2 and 3, wherein the apparatus further comprises a transceiver ... wherein the data is sent in compressed form .... [note: Dutta et al. Figures 1 and 2; paragraphs 0022 and 0027 ].

12. Regarding claims 4 and 5, "wherein the strongly collision free deterministic identifier comprises a hash value of said data .... Wherein the has value is generated by a cryptographic hashing algorithm [note: Andersen column 16 lines 48-57 hash value to uniquely identify contents for backup storage area].

13. Regarding claim 6, "wherein said cryptographic hashing algorithm is selected from the group of cryptographic hashing algorithms ... [note: Andersen teaches unique identifiers column 16 lines 48-57; while Dutta teaches special protocols may be defined see paragraphs 0023-0024, 0027 and 0031]. It would have been obvious to one of ordinary skill at the time of the invention to have provided a group selection since Dutta

teaches special protocols may be implemented this would provide greater flexibility to the end user in terms of tools for locating data.

14. Regarding claim 7, "wherein the strongly collision free deterministic identifier is a cryptographic checksum [note: Andersen column 16 lines 48-57 "the identification 194 may be, for example, a hash value, checksum or other unique identifier"].

15. Regarding claim 8, "wherein the strongly collision free deterministic identifier is wireless [note: Dutta et al. teaches wireless transfer of information see abstract; Figure 5; and paragraph 0043].

16. Regarding claim 9 and 10, further comprising a designating a data type not to backup from the wireless computing apparatus .... a data location .... [note: Dutta et al. paragraph 0043 push a content type for backup ].

17. Regarding claim 11, select a backup compilation ... receiving said restoration data from said backup server [note: Dutta et al. Figures 7 and 8; paragraph 0048; paragraph 0055 reloading backed up data ].

18. The limitations of claims 12-17 and 19 have been addressed above; therefore they are rejected under the same rational.

***Response to Arguments***

19. Applicant's arguments with respect to claims 1-17 and 19 have been considered but are moot in view of the new ground(s) of rejection.

In the response Applicant argued the following:

ARGUMENT: In response to the rejection cited under 35 USC 112 first paragraph of claims 1-16 as failing to comply with the written description requirement regarding the limitation "strongly collision free deterministic identifier" and 35 USC 112 second.

Applicant cites page 6 lines 15-16 for support of term. Applicant states "strongly collision free" is explained by example and that a strongly collision free deterministic algorithm is a hash algorithm that produces a hash value.

RESPONSE: The examiner respectfully maintains the rejection because the specification is vague as to the term "identifier", note applicant makes reference to the term strongly collision free and strongly collision free deterministic algorithm; however there is no specific description of strongly collision free deterministic identifier. The examiner requests clarification through amendment.

ARGUMENT: Applicant submits amendments to clarify claim language "only if" with respect to rejection cited under 35 USC 112 second paragraph.

RESPONSE: Applicant's amendment overcomes the rejection.

ARGUMENT: Applicant argues Dutta et al. does not teach decision limitation "only if said backup server indicates that said data is not already available to said backup server, send data to said backup server.

RESPONSE: Note Dutta et al. has been combined with newly cited reference Andersen.

### ***Conclusion***

20. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Greta L. Robinson whose telephone number is (571)272-4118. The examiner can normally be reached on M-F 9:30AM-6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tim T. Vo can be reached on (571)272-3642. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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/Greta L. Robinson/

Primary Examiner, Art Unit 2168

February 29, 2008